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1984. These supplements were approved by the Assistant Secretary on October 30, 1984.

(k) New Mexico adopted discrimination provisions parallel to 29 CFR part 1977 on March 29, 1982, with an amendment dated June 15, 1983. These supplements were approved by the Assistant Secretary on October 30, 1984.

(l) New Mexico submitted its field operations manual on May 16, 1980, with subsequent amendments dated March 4, 1983; May 11, 1983; May 23, 1983; June 8, 1983; June 16, 1983; June 17, 1983; and June 27, 1983. The manual reflects changes in the Federal program through March 1983. On July 25, 1980, with a subsequent amendment dated July 24, 1984, the State adopted Federal OSHA's Industrial Hygiene Manual. These supplements were approved by the Assistant Secretary on October 30, 1984.

(m) New Mexico on February 28, 1980, submitted a supplement containing a revised plan narrative with further revisions dated June 16, 1983; June 21, 1983; June 27, 1983, April 4, 1984, and July 24, 1984. These supplements were approved by the Assistant Secretary on October 30, 1984.

(n) In accordance with §1902.34 of this chapter, the New Mexico Occupational Health and Safety plan was certified effective December 4, 1984, as having completed all developmental steps specified in the plan as approved on December 4, 1975, on or before December 4, 1978. This certification attests to structural completion, but does not render judgment on adequacy of performance.

[49 FR 44205, Nov. 5, 1984, as amended at 49 FR 48918, Dec. 17, 1984. Redesignated at 59 FR 42497, Aug. 18, 1994]

§ 1952.363 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL-CIO v. Marshall*, compliance staffing levels ("benchmarks") necessary for a "fully effective" enforcement program were required for each State operating an approved State plan. In May 1992, New Mexico completed, in conjunction with OSHA, a reassessment of the staffing levels initially established in 1980 and proposed revised benchmarks of 7 safety and 3 health compliance officers. After op-

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portunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on August 11, 1994.

[59 FR 42497, Aug. 18, 1994]

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§ 1952.365 Level of Federal enforcement.

(a) Pursuant to §§1902.20(b)(1)(iii) and 1954.3 of this chapter, under which an operational status agreement has been entered into between OSHA and New Mexico, effective October 5, 1981, and based on a determination that New Mexico is operational in issues covered by the New Mexico occupational health and safety plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR parts 1910, 1926 and 1928 except as provided in this section. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to:

(1) Complaints filed with the U.S. Department of Labor alleging discrimination under section 11(c) of the Act (29 U.S.C. 660(c));

(2) Enforcement with respect to private sector maritime employment including 29 CFR parts 1915, 1917, 1918, 1919 (shipyard employment; marine terminals; longshoring and gear certification), and general industry and construction standards (29 CFR parts 1910 and 1926) appropriate to hazards found in these employments, which issues have been specifically excluded from coverage under the State plan;

(3) Enforcement in situations where the State is refused and is unable to obtain a warrant or enforce its right of entry;

(4) Enforcement of new Federal standards until the State adopts a comparable standard;

(5) Enforcement of unique and complex standards as determined by the Assistant Secretary;

(6) Enforcement in situations when the State is temporarily unable to exercise its enforcement authority fully or effectively;